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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,179	08/01/2003	James M. Leventhal	25739-024	4894
30623	7590	01/07/2008	EXAMINER	
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C. ONE FINANCIAL CENTER BOSTON, MA 02111			PICKETT, JOHN G	
		ART UNIT	PAPER NUMBER	
		3728		
		MAIL DATE	DELIVERY MODE	
		01/07/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/633,179	LEVENTHAL ET AL.
	Examiner Greg Pickett	Art Unit 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 October 2006.  
 2a) This action is **FINAL**.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 22,23,25-35,38-41 and 45-51 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 51 is/are allowed.  
 6) Claim(s) 22,23,25-35,38-41 and 45-50 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 20 October 2006 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. This Office Action is in response to the amendments filed 11 July 2006 and 20 October 2006. Claims 22, 23, 25-35, 38-41, and 45-51 are pending in the application.

Claims 1-21, 24, 36, 37, and 42-44 have been canceled. Claims 50 and 51 are new to the application.

A restriction requirement was made on 13 July 2005. Applicant elected Invention II, the packaging system, in the response of 13 October 2005; the election was made without traverse. All claims appear to be directed to the elected invention.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Drawings*

2. The drawings were received on 20 October 2006. These drawings are unacceptable since they fail to comply with 37 CFR 1.84(h)(3), which requires, "[t]he plane upon which a sectional view is taken to be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight." Replacement sheet 5/18 shows sectional line B-B without the necessary directional indicators at its ends.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

***Oath/Declaration***

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be **material to patentability** as defined in 37 CFR 1.56.

Applicant's declaration (1 August 2003) recites "material to the examination"; this is insufficient acknowledgement.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 46 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 46 recites a clearance for movement in the 1<sup>st</sup> portion, however the 1<sup>st</sup> portion is defined in claim 45 as retaining the stationary elements.

Claim 47 recites a conformance to the stationary elements in the 2<sup>nd</sup> portion, however the 2<sup>nd</sup> portion is defined in claim 45 as retaining the moving elements.

To examine the claims on their merits, the limitations of claim 46 are presumed to refer to the 2<sup>nd</sup> portion, and the limitations of claim 47 are presumed to refer to the 1<sup>st</sup> portion.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 40, 41, 45-47, and 49 are rejected under 35 U.S.C. 102(e) as being anticipated by Jimenez (US 2006/0059643 A1; 102(e) date of 25 October 2002).

40, 41, 49: In Figures 7 & 8, Jimenez discloses a system comprising an item 10A having one or more moving elements 24 and constructed and arranged to activate the item to one or more operating states, the item having an actuating element 50 operatively connected to one or more of the moving elements such that manipulation of the actuating element causes one or more of the moving elements to activate the item to one or more of the operating states; and a packaging assembly 26C constructed and arranged to contain at least a portion of the item, the packaging assembly defining an internal configuration (see Figure 7) sized and configured to contain the portion of the item within the packaging assembly and to permit the item to activate to one or more of the operating states, at least a portion of the packaging assembly defining an aperture (opening bounded by sidewalls 34, 40, and 46) configured to receive at least part of the portion of the item and further defining along a perimeter of the aperture two diametrically opposed tabs 42 & 44 extending inwardly toward the aperture, each tab being disposed and configured such that at least a portion of one of the tabs separately contacts the portion of the product to support the product in the packaging assembly (see Figure 7), and the packaging assembly being at least partially constructed of a material (transparent plastic, see [0033]) for providing a visual inspection of at least a portion of the item, the packaging assembly being further configured to permit at

least a portion of the actuating element to extend from the packaging assembly to permit access to and manipulation of the actuating element from an area external to the packaging assembly (see Figure 8). When the actuating element is manipulated, Jimenez is capable of a display of the item activating to one or more of the operating states.

45-47: Claim 45 broadly recites, "portions" of the packaging. Accordingly, the "portion" of packaging 26C around tabs 42 & 44 and engaging the item is considered the 1<sup>st</sup> portion that holds the stationary part of the item, and the "portion" above that and including the top wall is considered the 2<sup>nd</sup> portion that accommodates the moving elements (bristles 24). Claim 45 does not require any structural features to delimit these "portions". Jimenez is arranged as claimed in claims 46 and 47.

#### ***Claim Rejections - 35 USC § 103***

6. Claims 22, 23, 25-35, 38, 39, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feehan, Jr. (US 6,276,529; previously provided) in view of Thorpe (US 4,721,208; previously provided) and Lin (US 5,595,295).

22: Note - the product is not positively claimed. Accordingly, Feehan discloses a packaging system (see for example Figure 12) comprising a housing 1, 1<sup>st</sup> portion 2 and 2<sup>nd</sup> portion 2' forming a chamber, a substantially planar insert card 15 defining an aperture 15b, and diametrically opposed tabs (inwardly projecting portions of 15 in Figure 12). Feehan retains a razor and is capable of functioning as claimed. Feehan discloses the top and bottom as closed and lacks the disclosure of an open bottom.

Thorpe (see e.g. Figure 1) teaches the projecting of the handles of a razor from its packaging. And Lin teaches the provision of lower opening(s) to enable the user to handle the retained article without removing it from the package. When taken as a whole, one of ordinary skill in the art would have found it obvious to provide an opening in the bottom of the package of Feehan as taught by Lin and suggested by Thorpe, in order to project the handle of the retained razor and enable a user to interact with the razor handle without removing it from the package.

23: Feehan discloses transparent material.

25: Depending on the shape of the unspecified and unclaimed product, the tabs of Feehan are capable of functioning as claimed.

26: The modification of the 1<sup>st</sup> and 2<sup>nd</sup> portions of Feehan to be "substantially similar" would entail a mere change in shape and would have obvious in order to retain a symmetrical object. It was well known in the packaging art to mold the package to the shape of the retained article and such a change in shape would yield only predictable results. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

27 & 28: As shown in Figure 8, Feehan discloses an upper and lower portion of differing size. To modify the back side of Feehan with a similar shape would entail a mere change in shape and would have obvious in order to retain a symmetrical object. A change in form or shape is generally recognized as being within the level of ordinary

skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

29: Feehan defines a chamber as claimed.

30 & 31: The product is not required structure in the claim and is considered an intended use. Feehan, as modified by Lin and Thorpe, retains a razor and is fully capable of retaining an unspecified and unclaimed retractable razor in the manner claimed.

32: Feehan discloses transparent material.

33 & 34: The upper section of Feehan (see Figure 8) has a larger internal size, and depending on the shape of the unspecified and unclaimed retractable razor, is fully capable of retaining the razor in the manner claimed.

35: As shown in Figure 8, Feehan discloses an upper and lower portion of differing sizes that are fully capable of retaining an unspecified and unclaimed retractable razor in the manner claimed.

38, 39, & 50: The product is not required structure in the claim and is considered an intended use. Feehan, as modified by Lin and Thorpe, retains a razor in an upright position and, depending on the shape of the unclaimed retractable razor, is fully capable of retaining the razor in the manner claimed.

7. Claims 40, 41, and 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradfield (US 6,681,932; 102(e) date of 9 August 2001) in view of Rosler (US 5,979,652).

40, 41, & 48: Bradfield discloses a system 10 comprising an item 15 with moving element 15 and actuating element 20; and packaging assembly 14 arranged to contain a portion of item 15 and having an internal configuration sized to contain a portion of item 15 and defining an aperture 24. Packaging assembly 14 is transparent and therefore at least partially constructed for visual inspection. Bradfield is arranged with the actuating element 20 exterior to the packaging assembly 14 and meets all limitations claimed except for the opposing tabs at the aperture.

Bradfield discloses a plurality of indentations along the sides of the item 15 (see Figures 2, 3, 4, and 6).

Rosler teaches opposed tabs 13 (see Figures 1, 2, and 4) for engaging with the indentations of the retained items. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the packaging assembly 14 of Bradfield with indentations as taught by Rosler in order to either hold item 15 in place while fastener 41 is applied, or replace fastener 41 altogether in order to reduce the parts required for assembly.

45-47: Claim 45 broadly recites, "portions" of the packaging. Accordingly, the "portion" of packaging 14 around the tabs (sidewalls 22 as modified by Rosler 13) and engaging the item is considered the 1<sup>st</sup> portion that holds the stationary part of the item, and the "portion" above that and including the top wall 23 is considered the 2<sup>nd</sup> portion that accommodates the moving element 18. Claim 45 does not require any structural features to delimit these "portions". Bradfield-Rosler is arranged as claimed in claims 46 and 47.

***Allowable Subject Matter***

8. Claim 51 appears to define over the available prior art and is allowed.
  
9. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Response to Arguments***

10. Applicant's arguments with respect to claims 22, 23, 25-35, 38-41, and 45-51 have been fully considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greg Pickett/  
Primary Examiner  
Art Unit 3728